UNITED NATIONS

GENERAL ASSEMBLY

Distr:
GENERAL

A/CONF.152/10
12 April 1991

Original: ENGLISH

UNITED NATIONS CONFERENCE ON THE
LIABILITY OF OPERATORS OF TRANSPORT
TERMINALS IN INTERNATIONAL TRADE
Vienna, 2-19 April 1991

REPORT OF THE SECOND COMMITTEE

I. INTRODUCTION

A. Submission of the report

1. The Conference at its third plenary meeting entrusted the Second Committee with the consideration of articles 17 to 19, and 21 to 25, of the draft Convention on the Liability of Operators of Transport Terminals in International Trade (A/CONF.152/5).

2. The present document contains the report of the Second Committee to the Conference on its consideration of the draft articles referred to it, and of other proposals made to the Second Committee during its deliberations.

B. Election of officers

3. At its fourth plenary meeting on 5 April 1991, the Conference unanimously elected Ms. Jelena Vilus (Yugoslavia) as Chairman of the Second Committee. On 10 April 1991, at the second meeting of the Second Committee, Mr. Ken Fujishita (Japan) was elected Vice-President, and Ms. Sylvia Strolz (Austria) was elected Rapporteur, of the Second Committee.

C. Meetings, organization of work and structure of this report

(i) Meetings

4. The Second Committee held 4 meetings, on 8, 10, 12 and 15 April 1991.

V.91-35524 8151T

(ii) Organization of work

5. At its first meeting on 8 April 1991, the Second Committee adopted as its agenda the provisional agenda contained in A/CONF.152/C.2/L.1.

6. The Second Committee proceeded by way of an article-by-article discussion of the draft articles before it and of the amendments to those draft articles submitted by representatives during the Conference. After initial consideration of an article and amendments by the Second Committee, and subject to the decisions taken on those amendments, the article was referred to the Drafting Committee. After consideration of the report of the Drafting Committee to the Second Committee on the articles referred to the Drafting Committee, the Second Committee referred to the Plenary the articles considered by it.

(iii) Plan of this report

7. This report describes the work of the Second Committee relating to each article before it, in accordance with the following scheme:

(a) Text of the draft article as prepared by the United Nations Commission on International Trade Law (UNCITRAL);

(b) Texts of amendments, if any, with a brief description of the manner in which they were dealt with;

(c) Proceedings of the Second Committee, subdivided as follows:

(i) Meetings,
(ii) Consideration of the article.

II. CONSIDERATION BY THE SECOND COMMITTEE OF THE DRAFT CONVENTION ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE

Article 17

A. UNCITRAL text

8. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 17

"Depositary

"The Secretary-General of the United Nations is the depositary of this Convention."

B. Amendments

9. No amendments were submitted to article 17.

C. Proceedings in the Second Committee

(i) Meetings

10. The Second Committee considered article 17 at its first meeting on 8 April 1991.

(ii) Consideration

11. The UNCITRAL text for article 17 was adopted and referred to the Drafting Committee.

Article 18

A. UNCITRAL text

12. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 18

"Signature, ratification, acceptance, approval, accession

"(1) This Convention is open for signature at the concluding meeting of the United Nations Conference on ... and will remain open for signature by all States at the Headquarters of the United Nations, New York, until ... .

"(2) This Convention is subject to ratification, acceptance or approval by the signatory States.

"(3) This Convention is open to accession by all States which are not signatory States as from the date it is open for signature.

"(4) Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations."

B. Amendments

13. No amendments were submitted to article 18.

C. Proceedings in the Second Committee

(i) Meetings

14. The Second Committee considered article 18 at its first meeting on 8 April 1991.

(ii) Consideration

Paragraph (1)

15. The United States made an oral proposal that paragraph (1) provide that the Convention remain open until 30 April 1992. That proposal was adopted by 14 votes in favour and none against. The UNCITRAL text for paragraph (1) was adopted and referred to the Drafting Committee.

Paragraphs (2) to (4)

16. The UNCITRAL texts for paragraphs (2) to (4) were adopted and referred to the Drafting Committee.

Article 19

A. UNCITRAL TEXT

17. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 19

"Application to territorial units

"(1) If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may at any time substitute another declaration for its earlier declaration.

"(2) These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

"(3) If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a State Party, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a State Party, unless it is in a territorial unit to which the Convention extends.

"(4) If a State makes no declaration under paragraph (1) of this article, the Convention is to extend to all territorial units of that State."

B. Amendments

18. An amendment was submitted to article 19 by Canada (A/CONF.152/C.2/L.7).

19. The amendment was to the following effect:

Paragraph (3)

Canada (A/CONF.152/C.2/L.7):
Amend paragraph (3) to read as follows:

"(3) If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a State Party, this Convention shall be applicable only if

(a) the transport-related services are performed by an operator whose place of business is located in a territorial unit to which the Convention extends, or

(b) if the transport-related services are performed in such a territorial unit, or

(c) according to the rules of private international law, the transport-related services are governed by the law in force in a territorial unit to which the Convention extends."

[Adopted: see Consideration, 22, below.]

C. Proceedings in the Second Committee

(i) Meetings

20. The Second Committee considered article 19 at its second meeting on 10 April 1991.

(ii) Consideration

Paragraph (1) and (2)

21. The UNCITRAL texts for paragraphs (1) and (2) were adopted and referred to the Drafting Committee.

Paragraph (3)

22. The amendment proposed by Canada (A/CONF.152/C.2/L.7) was adopted by a vote of nine votes in favour, one vote against, and three abstentions. The UNCITRAL text for paragraph (3), as amended by the Second Committee, was adopted and referred to the Drafting Committee. Since the purpose of the amendment to paragraph (3) had been to align it with article 2 of the UNCITRAL text, the Drafting Committee was requested to align paragraph (3) with article 2 as adopted by the First Committee.

Paragraph (4)

23. The UNCITRAL text for paragraph (4) was adopted and referred to the Drafting Committee.

Article 21

A. UNCITRAL Text

24. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 21

"Effect of declaration

"(1) Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval.

"(2) Declarations and confirmations of declarations are to be in writing and to be formally notified to the depositary.

"(3) A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.

"(4) Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary."

B. Amendments

25. Amendments were submitted to article 21 by Japan (A/CONF.152/C.2/L.6) and Philippines (A/CONF.152/L.8)

26. Those amendments were to the following effect:

Article 21 in its entirety

Philippines (A/CONF.152/C.2/L.8):
Delete article 21.

[Withdrawn: see Consideration, 28, below.]

Paragraphs (1) and (4)

Japan (A/CONF.152/C.2/L.6):
Replace the words "made under this Convention" by the words "made under article 19".

[Adopted: see Consideration, 29, below].

C. Proceedings in the Second Committee

(i) Meetings

27. The Second Committee considered article 21 at its second meeting on 10 April 1991.

(ii) Consideration

Article 21 in its entirety

28. The proposal by the Philippines to delete article 21 (A/CONF.152/C.2/L.8) was withdrawn. The Drafting Committee was requested to consider inverting the order of articles 20 and 21, so that the provisions on the effect of declaration would appear immediately following article 19.

Paragraphs (1) and (4)

29. The amendment by Japan was adopted by a vote of nine votes in favour and five votes against. The UNCITRAL texts for those paragraphs, as amended by the Second Committee, were adopted and referred to the Drafting Committee.

Paragraphs (2) and (3)

30. The UNCITRAL texts for paragraphs (2) and (3) were adopted and referred to the Drafting Committee.

Article 22

A. UNCITRAL Text

31. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 22

"Entry into force

"(1) This Convention enters into force on the first day of the month following the expiration of one year from the date of deposit of the fifth instrument of ratification, acceptance, approval or accession.

"(2) For each State which becomes a Contracting State to this Convention after the date of the deposit of the fifth instrument of ratification, acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of one year after the date of the deposit of the appropriate instrument on behalf of that State.

"(3) Each State Party shall apply the provisions of this Convention to transport-related services with respect to goods taken in charge by the operator on or after the date of the entry into force of this Convention in respect of that State."

B. Amendments

32. Amendments were submitted to article 1 by Germany (A/CONF.152/C.2/L.4), and Netherlands (A/CONF.152/C.2/L.5).

33. Those amendments were to the following effect:

Paragraph (1)

Germany (A/CONF.152/C.2/L.4) and Netherlands (A/CONF.152/C.2/L.5): In Article 22, paragraph (i), the word "fifth" should be replaced by the word "fifteenth".

[Rejected: see Consideration, 35, below]

C. Proceedings in the Second Committee

(i) Meetings

34. The Second Committee considered article 22 at its first meeting on 8 April 1991.

(ii) Consideration

Paragraph (1)

35. The amendment by Germany (A/CONF.152/C.2/L.4) and Netherlands (A/CONF.152/C.2/L.5) was rejected by a vote of 5 votes in favour and 8 votes against. The UNCITRAL text for paragraph (1) was adopted and referred to the Drafting Committee.

Paragraphs (2) and (3)

36. The UNCITRAL texts for paragraphs (2) and (3) were adopted and referred to the Drafting Committee.

Article 23

A. UNCITRAL Text

37. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 23

"Revision and amendment

"(1) At the request of not less than one third of the States Parties to this Convention, the depositary shall convene a conference of the Contracting States for revising or amending it.

"(2) Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended."

B. Amendments

38. No amendments were submitted to article 23.

C. Proceedings in the Second Committee

(i) Meetings

39. The Second Committee considered article 23 at its first meeting on 8 April 1991.

(ii) Consideration

40. The UNCITRAL text for article 23 was adopted and referred to the Drafting Committee.

Article 24

A. UNCITRAL Text

41. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 24

"Revision of limitation amounts

"(1) At the request of at least one quarter of the States Parties, the depositary shall convene a meeting of a Committee composed of a representative from each Contracting State to consider increasing or decreasing the amounts in article 6.

"(2) If this Convention enters into force more than five years after it was opened for signature, the depositary shall convene a meeting of the Committee within the first year after it enters into force.

"(3) The meeting of the Committee shall take place on the occasion and at the location of the next session of the United Nations Commission on International Trade Law.

"(4) In determining whether the limits should be amended, and if so, by what amount, the following criteria, determined on an international basis, and any other criteria considered to be relevant, shall be taken into consideration:

(a) The amount by which the limits of liability in any transport-related convention have been amended;

(b) The value of goods handled by operators;

(c) The cost of transport-related services;

d) Insurance rates, including for cargo insurance, liability insurance for operators and insurance covering job-related injuries to workmen;

(e) The average level of damages awarded against operators for loss of or damage to goods or delay in handing over goods; and

(f) The costs of electricity, fuel and other utilities.

"(5) Amendments shall be adopted by the Committee by a two-thirds majority of its members present and voting.

"(6) No amendment of the limits of liability under this article may be considered less than five years from the date on which this Convention was opened for signature.

"(7) Any amendment adopted in accordance with paragraph (5) shall be notified by the depositary to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of 18 months after it has been notified, unless within that period not less than one

third of the States that were States Parties at the time of the adoption of the amendment by the Committee have communicated to the depositary that they do not accept the amendment. An amendment deemed to have been accepted in accordance with this paragraph shall enter into force for all States Parties 18 months after its acceptance.

"(8) A State Party which has not accepted an amendment shall nevertheless be bound by it, unless such State denounces the present Convention at least one month before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

"(9) When an amendment has been adopted in accordance with paragraph (5) but the 18-month period for its acceptance has not yet expired, a State which becomes a State Party to this Convention during that period shall be bound by the amendment if it enters into force. A State which becomes a State Party after that period shall be bound by any amendment which has been accepted in accordance with paragraph (7).

"(10) The applicable limit of liability shall be that which, in accordance with the preceding paragraphs, is in effect on the date of the occurrence which caused the loss, damage or delay."

B. Amendments

42. No amendments were submitted to article 24.

C. Proceedings in the Second Committee

(i) Meetings

43. The Second Committee considered article 24 at its first meeting on 8 April 1991.

(ii) Consideration

Paragraph (1)

44. The UNCITRAL text for paragraph (1) was adopted and referred to the Drafting Committee.

Subparagraph (2)

45. The United Kingdom of Great Britain and Northern Ireland made an oral proposal to delete subparagraph (2). That proposal was withdrawn and the UNCITRAL text for paragraph (2) was adopted and referred to the Drafting Committee.

Subparagraph (3) to (6)

46. The UNCITRAL texts for paragraphs (3) to (6) were adopted and referred to the Drafting Committee.

Paragraph (7)

47. The Islamic Republic of Iran made a proposal for the addition, at the end of paragraph (7), of a sentence to the effect that the Secretary-General as depository would notify Contracting States of the entry into force of an amendment under article 24. That proposal was withdrawn and the UNCITRAL text for paragraph (7) was adopted and referred to the Drafting Committee.

Paragraphs (8) to (10)

48. The UNCITRAL texts for paragraphs (8) to (10) were adopted and referred to the Drafting Committee.

Article 25

A. UNCITRAL Text

49. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 25

"Denunciation

"(1) A State Party may denounce this Convention at any time by means of a notification in writing addressed to the depositary.

"(2) The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary."

B. Amendments

50. No amendments were submitted to article 25.

C. Proceedings in the Second Committee

(i) Meetings

51. The Second Committee considered article 25 at its first meeting on 8 April 1991.

(ii) Consideration

52. The UNCITRAL text for article 25 was adopted and referred to the Drafting Committee.

Final, Formal Clauses of the Convention

A. UNCITRAL Text

53. The text of the United Nations Commission on International Trade Law provided as follows:

"DONE at ..., this ... day of ... one thousand nine hundred and ..., in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed the present Convention."

B. Amendments

54. No amendments were submitted concerning the final, formal clauses of the Convention.

C. Proceedings in the Second Committee

(i) Meetings

55. The Second Committee considered the final, formal clauses of the Convention at its second meeting on 10 April 1991.

(ii) Consideration

56. The Committee decided to indicate the date and place of adoption of the Convention.

UNITED NATIONS

GENERAL ASSEMBLY

Distr:
GENERAL

A/CONF.152/10/Add.1
15 April 1991

Original: ENGLISH

UNITED NATIONS CONFERENCE ON THE
LIABILITY OF OPERATORS OF TRANSPORT
TERMINALS IN INTERNATIONAL TRADE
Vienna, 2-19 April 1991

REPORT OF THE SECOND COMMITTEE

III. Consideration of the report of the Drafting Committee to the Committee

57. At its fourth meeting, held on 15 April 1991, the Second Committee received the Report of the Drafting Committee to the Second Committee containing the texts of articles 17 to 25, as approved by the Drafting Committee (A/CONF.152/C.2/L.9). The Second Committee referred those articles to the Plenary.

UNITED NATIONS

GENERAL ASSEMBLY

Distr:
GENERAL

A/CONF.152/11
15 April 1991

Original: ENGLISH

UNITED NATIONS CONFERENCE ON THE
LIABILITY OF OPERATORS OF TRANSPORT
TERMINALS IN INTERNATIONAL TRADE
Vienna, 2-19 April 1991

REPORT OF THE FIRST COMMITTEE

Articles 1 to 16 of the Convention on the Liability of Operators of Transport Terminals in International Trade as adopted by the First Committee

Article 1

Definitions

In this Convention:

(a) "Operator of a transport terminal" (hereinafter referred to as "operator") means a person who, in the course of his business, undertakes to take in charge goods involved in international carriage in order to perform or to procure the performance of transport-related services with respect to the goods in an area under his control or in respect of which he has a right of access or use. However, a person is not considered an operator whenever he is responsible for the goods under applicable rules of law governing carriage.

(b) Where goods are consolidated in a container, pallet or similar article of transport or where they are packed, "goods" includes such article of transport or packaging if it was not supplied by the operator;

(c) "International carriage" means any carriage in which the place of departure and the place of destination are identified as being located in two different States when the goods are taken in charge by the operator;

(d) "Transport-related services" includes such services as storage, warehousing, loading, unloading, stowage, trimming, dunnaging and lashing;

(e) "Notice" means a notice given in a form which provides a record of the information contained therein;

V.91-35627 8172T

(f) "Request" means a request made in a form which provides a record of the information contained therein.

Article 2

Scope of application

(1) This Convention applies to transport-related services performed in relation to goods which are involved in international carriage:

(a) When the transport-related services are performed by an operator whose place of business is located in a State Party, or

(b) When the transport-related services are performed in a State Party, or

(c) When, according to the rules of private international law, the transport-related services are governed by the law of a State Party.

(2) If the operator has more than one place of business, the place of business is that which has the closest relationship to the transport-related services as a whole.

(3) If the operator does not have a place of business, reference is to be made to the operator's habitual residence.

Article 3

Period of responsibility

The operator is responsible for the goods from the time he has taken them in charge until the time he has handed them over to or has placed them at the disposal of the person entitled to take delivery of them.

Article 4

Issuance of document

(1) The operator may, and at the customer's request shall, within a reasonable period of time, at the option of the operator, either:

(a) Acknowledge his receipt of the goods by signing and dating a document presented by the customer that identifies the goods, or

(b) Issue a signed document identifying the goods, acknowledging his receipt of the goods and the date thereof, and stating their condition and quantity in so far as they can be ascertained by reasonable means of checking.

(2) If the operator does not act in accordance with either subparagraph (a) or (b) of paragraph (1), he is presumed to have received the goods in apparent good condition, unless he proves otherwise. No such presumption applies when the services performed by the operator are limited to the immediate transfer of the goods between means of transport.

(3) A document referred to in paragraph (1) may be issued in any form which preserves a record of the information contained therein. When the customer and the operator have agreed to communicate electronically, a document referred to in paragraph (1) may be replaced by an equivalent electronic data interchange message.

(4) The signature referred to in paragraph (1) means a handwritten signature, its facsimile or an equivalent authentication effected by any other means.

Article 5

Basis of liability

(1) The operator is liable for loss resulting from loss of or damage to the goods, as well as from delay in handing over the goods, if the occurrence which caused the loss, damage or delay took place during the period of the operator's responsibility for the goods as defined in article 3, unless he proves that he, his servants or agents or other persons of whose services the operator makes use for the performance of the transport-related services took all measures that could reasonably be required to avoid the occurrence and its consequences.

(2) Where a failure on the part of the operator, his servants or agents or other persons of whose services the operator makes use for the performance of the transport-related services to take the measures referred to in paragraph (1) combines with another cause to produce loss, damage or delay, the operator is liable only to the extent that the loss resulting from such loss, damage or delay is attributable to that failure, provided that the operator proves the amount of the loss not attributable thereto.

(3) Delay in handing over the goods occurs when the operator fails to hand them over to or place them at the disposal of a person entitled to take delivery of them within the time expressly agreed upon or, in the absence of such agreement, within a reasonable time after receiving a request for the goods by such person.

(4) If the operator fails to hand over the goods to or place them at the disposal of a person entitled to take delivery of them within a period of 30 consecutive days after the date expressly agreed upon or, in the absence of such agreement, within a period of 30 consecutive days after receiving a request for the goods by such person, a person entitled to make a claim for the loss of the goods may treat them as lost.

Article 6

Limits of liability

(1) (a) The liability of the operator for loss resulting from loss of or damage to goods according to the provisions of article 5 is limited to an amount not exceeding 8.33 units of account per kilogram of gross weight of the goods lost or damaged.

(b) However, if the goods are handed over to the operator immediately after carriage by sea or by inland waterways, or if the goods are handed over, or are to be handed over, by him for such carriage, the liability of the operator for loss resulting from loss of or damage to goods according to the provisions of article 5 is limited to an amount not exceeding 2.75 units of account per kilogram of gross weight of the goods lost or damaged. For the purposes of this paragraph, carriage by sea or by inland waterways includes pick-up and delivery within a port.

(c) When the loss of or damage to a part of the goods affects the value of another part of the goods, the total weight of the lost or damaged goods and of the goods whose value is affected shall be taken into consideration in determining the limit of liability.

(2) The liability of the operator for delay in handing over the goods according to the provisions of article 5 is limited to an amount equivalent to two and a half times the charges payable to the operator for his services in respect of the goods delayed, but not exceeding the total of such charges in respect of the consignment of which the goods were a part.

(3) In no case shall the aggregate liability of the operator under both paragraphs (1) and (2) exceed the limitation which would be established under paragraph (1) for total loss of the goods in respect of which such liability was incurred.

(4) The operator may agree to limits of liability exceeding those provided for in paragraphs (1), (2) and (3).

Article 7

Application to non-contractual claims

(1) The defences and limits of liability provided for in this Convention apply in any action against the operator in respect of loss of or damage to the goods, as well as delay in handing over the goods, whether the action is founded in contract, in tort or otherwise.

(2) If such an action is brought against a servant or agent of the operator, or against another person of whose services the operator makes use for the performance of the transport-related services, such servant, agent or person, if he proves that he acted within the scope of his employment or engagement by the operator, is entitled to avail himself of the defences and limits of liability which the operator is entitled to invoke under this Convention.

(3) Except as provided in article 8, the aggregate of the amounts recoverable from the operator and from any servant, agent or person referred to in the preceding paragraph shall not exceed the limits of liability provided for in this Convention.

Article 8

Loss of right to limit liability

(1) The operator is not entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay resulted from an act or omission of the operator himself or his servants or agents done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

(2) Notwithstanding the provision of paragraph (2) of article 7, a servant or agent of the operator or another person of whose services the operator makes use for the performance of the transport-related services is not entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay resulted from an act or omission of such servant, agent or person done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

Article 9

Special rules on dangerous goods

If dangerous goods are handed over to the operator without being marked, labelled, packaged or documented in accordance with any law or regulation relating to dangerous goods applicable in the country where the goods are handed over and if, at the time the goods are taken in charge by him, the operator does not otherwise know of their dangerous character, he is entitled:

(a) To take all precautions the circumstances may require, including, when the goods pose an imminent danger to any person or property, destroying the goods, rendering them innocuous, or disposing of them by any other lawful means, without payment of compensation for damage to or destruction of the goods resulting from such precautions, and

(b) To receive reimbursement for all costs incurred by him in taking the measures referred to in subparagraph (a) from the person who failed to meet any obligation under such applicable law or regulation to inform him of the dangerous character of the goods.

Article 10

Rights of security in goods

(1) The operator has a right of retention over the goods for costs and claims which are due in connection with the transport-related services performed by him in respect of the goods both during the period of his responsibility for them and thereafter. However, nothing in this Convention affects the validity under the applicable law of any contractual arrangements extending the operator's security in the goods.

(2) The operator is not entitled to retain the goods if a sufficient guarantee for the sum claimed is provided or if an equivalent sum is deposited with a mutually accepted third party or with an official institution in the State where the operator has his place of business.

(3) In order to obtain the amount necessary to satisfy his claim, the operator is entitled, to the extent permitted by the law of the State where the goods are located, to sell all or part of the goods over which he has exercised the right of retention provided for in this article. This right to sell does not apply to containers, pallets or similar articles of transport or packaging which are owned by a party other than the carrier or the shipper and which are clearly marked as regards ownership except in respect of claims by the operator for the cost of repairs of or improvements to the containers, pallets or similar articles of transport or packaging.

(4) Before exercising any right to sell the goods, the operator shall make reasonable efforts to give notice of the intended sale to the owner of the goods, the person from whom the operator received them and the person entitled to take delivery of them from the operator. The operator shall account appropriately for the balance of the proceeds of the sale in excess of the sums due to the operator plus the reasonable costs of the sale. The right of sale shall in all other respects be exercised in accordance with the law of the State where the goods are located.

Article 11

Notice of loss, damage or delay

(1) Unless notice of loss or damage, specifying the general nature of the loss or damage, is given to the operator not later than the third working day after the day when the goods were handed over by the operator to the person entitled to take delivery of them, the handing over is *prima facie* evidence of the handing over by the operator of the goods as described in the document issued by the operator pursuant to paragraph (1)(b) of article 4 or, if no such document was issued, in good condition.

(2) Where the loss or damage is not apparent, the provisions of paragraph (1) apply correspondingly if notice is not given to the operator within 15 consecutive days after the day when the goods reached the final recipient, but in no case later than 60 consecutive days after the day when the goods were handed over to the person entitled to take delivery of them.

(3) If the operator participated in a survey or inspection of the goods at the time when they were handed over to the person entitled to take delivery of them, notice need not be given to the operator of loss or damage ascertained during that survey or inspection.

(4) In the case of any actual or apprehended loss of or damage to the goods, the operator, the carrier and the person entitled to take delivery of the goods shall give all reasonable facilities to each other for inspecting and tallying the goods.

(5) No compensation is payable for loss resulting from delay in handing over the goods unless notice has been given to the operator within 21 consecutive days after the day when the goods were handed over to the person entitled to take delivery of them.

Article 12

Limitation of actions

(1) Any action under this Convention is time-barred if judicial or arbitral proceedings have not been instituted within a period of two years.

(2) The limitation period commences:

(a) On the day the operator hands over the goods or part thereof to, or places them at the disposal of, a person entitled to take delivery of them, or

(b) In cases of total loss of the goods, on the day the person entitled to make a claim receives notice from the operator that the goods are lost, or on the day that person may treat the goods as lost in accordance with paragraph (4) of article 5, whichever is earlier.

(3) The day on which the limitation period commences is not included in the period.

(4) The operator may at any time during the running of the limitation period extend the period by a notice to the claimant. The period may be further extended by another notice or notices.

(5) A recourse action by a carrier or another person against the operator may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs if it is instituted within 90 days after the carrier or other person has been held liable in an action against himself or has settled the claim upon which such action was based and if, within a reasonable period of time after the filing of a claim against a carrier or other person that may result in a recourse action against the operator, notice of the filing of such a claim has been given to the operator.

Article 13

Contractual stipulations

(1) Unless otherwise provided in this Convention, any stipulation in a contract concluded by an operator or in any document signed or issued by the operator pursuant to article 4 is null and void to the extent that it derogates, directly or indirectly, from the provisions of this Convention. The nullity of such a stipulation does not affect the validity of the other provisions of the contract or document of which it forms a part.

(2) Notwithstanding the provisions of the preceding paragraph, the operator may agree to increase his responsibilities and obligations under this Convention.

Article 14

Interpretation of the Convention

In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application.

Article 15

International transport conventions

This Convention does not modify any rights or duties which may arise under an international convention relating to the international carriage of goods which is binding on a State which is a party to this Convention or under any law of such State giving effect to a convention relating to the international carriage of goods.

Article 16

Unit of account

(1) The unit of account referred to in article 6 is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in article 6 are to be expressed in the national currency of a State according to the value of such currency at the date of judgement or the date agreed upon by the parties. The equivalence between the national currency of a State Party which is a member of the International Monetary Fund and the Special Drawing Right is to be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The equivalence between the national currency of a State Party which is not a member of the International Monetary Fund and the Special Drawing Right is to be calculated in a manner determined by that State.

(2) The calculation mentioned in the last sentence of the preceding paragraph is to be made in such a manner as to express in the national currency of the State Party as far as possible the same real value for amounts in article 6 as is expressed there in units of account. States Parties must communicate to the depositary the manner of calculation at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession and whenever there is a change in the manner of such calculation.

UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/CONF.152/12
15 April 1991

ORIGINAL: ENGLISH

UNITED NATIONS CONFERENCE
ON THE LIABILITY OF OPERATORS
OF TRANSPORT TERMINALS IN
INTERNATIONAL TRADE
Vienna, 2-19 April 1991

PLENARY

Draft articles 17 to 25 of the
draft Convention on the Liability of Operators of Transport
Terminals in International Trade as prepared by the
Drafting Committee and approved by the Second Committee

FINAL CLAUSES

Article 17

Depositary

The Secretary-General of the United Nations is the depositary of this Convention.

Article 18

Signature, ratification, acceptance, approval, accession

(1) This Convention is open for signature at the concluding meeting of the United Nations Conference on the Liability of Operators of Transport Terminals in International Trade and will remain open for signature by all States at the Headquarters of the United Nations, New York, until 30 April 1992.

(2) This Convention is subject to ratification, acceptance or approval by the signatory States.

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(3) This Convention is open to accession by all States which are not signatory States as from the date it is open for signature.

(4) Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 19

Application to territorial units

(1) If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may at any time substitute another declaration for its earlier declaration.

(2) These declarations are to state expressly the territorial units to which the Convention extends.

(3) If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a State Party, this Convention shall be applicable only if

(a) The transport-related services are performed by an operator whose place of business is located in a territorial unit to which the Convention extends, or

(b) The transport-related services are performed in a territorial unit to which the Convention extends, or

(c) According to the rules of private international law, the transport-related services are governed by the law in force in a territorial unit to which the Convention extends.

(4) If a State makes no declaration under paragraph (1) of this article, the Convention is to extend to all territorial units of that State.

Article 20

Effect of declaration

(1) Declarations made under article 19 at the time of signature are subject to confirmation upon ratification, acceptance or approval.

(2) Declarations and confirmations of declarations are to be in writing and to be formally notified to the depositary.

(3) A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.

(4) Any State which makes a declaration under article 19 may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal takes effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

Article 21

Reservations

No reservations may be made to this Convention.

Article 22

Entry into force

(1) This Convention enters into force on the first day of the month following the expiration of one year from the date of deposit of the fifth instrument of ratification, acceptance, approval or accession.

(2) For each State which becomes a Contracting State to this Convention after the date of the deposit of the fifth instrument of ratification, acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of one year after the date of the deposit of the appropriate instrument on behalf of that State.

(3) Each State Party shall apply the provisions of this Convention to transport-related services with respect to goods taken in charge by the operator on or after the date of the entry into force of this Convention in respect of that State.

Article 23

Revision and amendment

(1) At the request of not less than one third of the States Parties to this Convention, the depositary shall convene a conference of the Contracting States for revising or amending it.

(2) Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended.

Article 24

Revision of limitation amounts

(1) At the request of at least one quarter of the States Parties, the depositary shall convene a meeting of a Committee composed of a representative from each Contracting State to consider increasing or decreasing the amounts in article 6.

(2) If this Convention enters into force more than five years after it was opened for signature, the depositary shall convene a meeting of the Committee within the first year after it enters into force.

(3) The meeting of the Committee shall take place on the occasion and at the location of the next session of the United Nations Commission on International Trade Law.

(4) In determining whether the limits should be amended, and if so, by what amount, the following criteria, determined on an international basis, and any other criteria considered to be relevant, shall be taken into consideration:

(a) The amount by which the limits of liability in any transport-related convention have been amended;

(b) The value of goods handled by operators;

(c) The cost of transport-related services;

(d) Insurance rates, including for cargo insurance, liability insurance for operators and insurance covering job-related injuries to workmen;

(e) The average level of damages awarded against operators for loss of or damage to goods or delay in handing over goods; and

(f) The costs of electricity, fuel and other utilities.

(5) Amendments shall be adopted by the Committee by a two-thirds majority of its members present and voting.

(6) No amendment of the limits of liability under this article may be considered less than five years from the date on which this Convention was opened for signature.

(7) Any amendment adopted in accordance with paragraph (5) shall be notified by the depositary to all Contracting States. The amendment is deemed to have been accepted at the end of a period of 18 months after it has been notified, unless within that period not less than one third of the States that were States Parties at the time of the adoption of the amendment by the Committee have communicated to the depositary that they do not accept the amendment. An amendment deemed to have been accepted in accordance with this paragraph enters into force for all States Parties 18 months after its acceptance.

(8) A State Party which has not accepted an amendment is nevertheless bound by it, unless such State denounces the present Convention at least one month before the amendment enters into force. Such denunciation takes effect when the amendment enters into force.

(9) When an amendment has been adopted in accordance with paragraph (5) but the 18-month period for its acceptance has not yet expired, a State which becomes a State Party to this Convention during that period is bound by the amendment if it enters into force. A State which becomes a State Party after that period is bound by any amendment which has been accepted in accordance with paragraph (7).

(10) The applicable limit of liability is that which, in accordance with the preceding paragraphs, is in effect on the date of the occurrence which caused the loss, damage or delay.

Article 25

Denunciation

(1) A State Party may denounce this Convention at any time by means of a notification in writing addressed to the depositary.

(2) Subject to paragraph (8) of article 24, the denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

DONE at Vienna, this ... day of April one thousand nine hundred and ninety-one, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed the present Convention.